

2/22/10

(10)

TOWN OF ACTON

Memo

To: Board of Selectmen
From: Steven L. Ledoux, Town Manager
CC:
Date: February 18, 2010
Re: Military Pay

At the last Board of Selectmen Meeting, the issue of Military Pay Differential was discussed. Acceptance of Chapter 137 of the Acts of 2003 (Amended by Chapter 77 of the Acts of 2005) were reviewed as well as a draft policy that could be implemented in lieu of acceptance of the State law. The draft policy also included expanded language for those who may be called for duty to another State or federal agency such as FEMA. Counsel had some initial reservations on the policy, but felt it could be revised to accommodate his concerns.

Attached please find the proposed policy as well as Counsel email on the subject of retroactivity of Chapter 137. The policy can be retroactive to whatever date we feel is appropriate, but would have to be impact bargained with the appropriate unions.

Call-up Pay Policy

Any active full-time or part-time employee currently employed by the Town of Acton, who serves in the military or is a member of an official federal or state organization recognized by the federal and state government for tax purposes, and who is called to active duty as such, may receive from the Town the difference between the base pay he/she is receiving from the military or such an organization and his/her base salary from the Town. If the employee's leave to serve in such an organization is voluntary rather than as a mandatory call-up, the Town Manager may determine what if any rate the employee may be paid during such leave time. For purposes of this policy, the employee's base salary from the Town shall mean the employee's base salary or wages, not including any bonus, overtime pay, holiday pay, severance pay, amounts paid for any unused sick leave, early retirement incentives, or any other payments made as a result of said employment, call-up, leave or otherwise.

Steve Ledoux

From: Stephen Anderson
Sent: Sunday, February 07, 2010 4:04 PM
To: Steve Ledoux; John Murray
Cc: Nina Pickering Cook; Mina Makarious
Subject: Acton/GenSel - Military Call Up Pay
Attachments: Acton/GenSel - Military Pay Differential; RE: Acton/GenSel - Military Pay Differential; Chapter 137 of the Acts of 2003; Chapter 77 of the Acts of 2005; Warrant Article to Accept Military Pay Differential Act (A0097792).DOC

Steve and John:

You have each asked whether the military pay differential benefit (a/k/a "Call Up Pay") provided in § 1 of c. 137 of the Acts of 2003 is retroactive. The answer is yes. See my emails to Marianne Fleckner of January 21 and January 23 (attached). (This section has been extended twice, by c. 77 of the Acts of 2005 to 9/11/08, and by outside § 77 of the FY 2009 State Budget to 9/11/11.) See also EOAF's Advisory at http://www.mass.gov/?pageID=afterterminal&L=4&L0=Home&L1=Employment%2C+Equal+Access%2C+Disability&L2=State+Employee+Benefits+%26+Compensation&L3=Military+Pay+Act&sid=Eoaf&b=terminalcontent&f=hrd_policies_pol_military_qanda&csid=F

A complication regarding how to pay for retroactive benefits under the statute arises from the history of § 2 of c. 137 of the Acts of 2003. Originally, that section stated: "Notwithstanding any general or special law to the contrary, state agencies and municipal governments may expend in the current fiscal year associated costs incurred in prior fiscal years pursuant to this act." However, this provision expired on 9/11/05 and has not been extended by the legislation that extended § 1. This presents a mechanical problem as to how to budget and pay for the retroactive portion of the Call Up Pay if the Town were to adopt the Act. The state has finessed this issue by considering the retroactive amounts to be current fiscal year obligations. See http://www.mass.gov/Eoaf/docs/hrd/policies/files/pol_militarypayact.doc ("Retroactive amounts due for time served between September 11, 2001 to the present will be considered current fiscal year obligations, since the entitlement to the benefit was created in FY2005 [when § 1 of the original Act was extended].") Following this same logic, the retroactive portion of the Call Up Pay should "be considered current fiscal year obligations" for the fiscal year in which the Town first adopts the Act.

Steve has asked whether, in presenting to Town Meeting the question whether to adopt the Act, we can condition the warrant article and motion that if this statute is extended beyond 9/11/2011 (the current expiration date) it will need to be brought back to Town Meeting for reauthorization. The answer is yes. The Town can adopt the Act as it exists now and is not locked into an extension of the Act without further Town Meeting action, provided the Town Meeting warrant article and Motion are properly structured.

I have attached a draft Warrant Article and Summary by which this could be accomplished.

Let me know if you have any questions.

Steve.

Stephen D. Anderson
 ANDERSON & KREIGER LLP
 One Canal Park, Suite 200
 Cambridge MA 02141

2/18/2010

Steve Ledoux

To: Steve Ledoux
Subject: FW: Acton/GenSel - military pay differential

From: Marianne Fleckner
Sent: Thursday, February 18, 2010 9:11 AM
To: Steve Ledoux
Cc: John Murray
Subject: FW: Acton/GenSel - military pay differential

I hi-lighted Paul's response and Steve's response in red. In Steve's original response he says "(copy attached)";

Marianne C. Fleckner
Director of Human Resources
Town of Acton
472 Main Street
Acton, MA 01720
(978) 264.9603

From: Marianne Fleckner
Sent: Tuesday, February 09, 2010 5:17 PM
To: John Murray
Cc: Steve Ledoux; Paul Hodnett
Subject: RE: Acton/GenSel - military pay differential

Hi John,

I've missed you a couple of times today, so my apologies. I wanted to let you know that Paul called this morning regarding his interpretation of Chapter 137. Like Steve Anderson, he stands by his first interpretation which is September 11, 2001 is still in effect.

He thinks that Peter may be thinking that it was repelled because of Section 2 not being extended. Section 2 states, "...municipal governments may expend in the current fiscal year associated costs incurred in prior fiscal years....". But, it is clear, even through follow-up bulletins from EOAF and HRD, (see Paul's e-mail from the other day), that eligibility has been extended to September 11, 2011.

Marianne C. Fleckner
Director of Human Resources
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From: Stephen D. Anderson [mailto:SAnderson@AndersonKreiger.com]
Sent: Tuesday, February 09, 2010 4:51 PM
To: Marianne Fleckner; Paul Hodnett
Cc: Steve Ledoux; John Murray; Nina Pickering Cook
Subject: RE: Acton/GenSel - military pay differential

All:

Nina spoke to Peter today. Peter will review our analysis of retroactivity (copy attached) which Nina will forward to him. However, Peter was not aware of a specific provision repealing the retroactivity requirements. Instead, Peter was referring to the legislative determination not to extend § 2 of c. 137 of the Acts of 2003. We do not view that as a repeal of the retroactivity requirements and (unless Peter provides contrary authority), we stand by the prior analysis at this time.

Steve

From: Marianne Fleckner [mailto:mfleckner@acton-ma.gov]
Sent: Tuesday, February 09, 2010 8:24 AM
To: Stephen D. Anderson; Paul Hodnett
Cc: Steve Ledoux; John Murray
Subject: military pay differential

Good morning,

You have been helping us with the interpretation of Military Pay differential. Last night, at the BoS meeting, Peter Berry commented that the September 11, 2001 retroactive language has been repelled.

We understand the Sept 11, 2001 language is still active, the end date has been extended to Sept 11, 2011 and if we adopt Chapter 137 we'd have to honor the Sept 11, 2001 date.

Do you know what Peter may be referring to? Thanks so much.

Marianne C. Fleckner
Director of Human Resources
Town of Acton
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